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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

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9 Debtor.

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12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 September 26, 2023

17 2:08 PM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ALIANNA PERSAUD

1 HEARING re Doc. #731 Notice Of Agenda

2

3 HEARING re Doc. #697 Omnibus Motion to Reject Lease or  
4 Executory Contract / Debtors Omnibus Motion for Entry of an  
5 Order (I) Approving Rejection of Certain Executory  
6 Contracts, (II) Authorizing Procedures for the Rejection of  
7 Executory Contracts and the Abandonment of Related Assets  
8 and (III) Authorizing Procedures for the Settlement of  
9 Certain de minimis Claims

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25 Transcribed by: Sonya Ledanski Hyde

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12  
13      BY:    GREG ZIPES  
14

15     ALSO PRESENT TELEPHONICALLY:

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18     ERIC I. ASQUITH  
19     BENJAMIN BELLER  
20     BRIAN D. GLUECKSTEIN  
21     BARRY JONES  
22     DIETRICH KNAUTH  
23     TUKISHA KNOX  
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1 JESSICA LIOU  
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3 KYLE MCKUHEN  
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5 LEAH MEI  
6 MICHELE MEISES  
7 ANAIS MITRA  
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9 JOHN NGUYEN  
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12 GREGORY F. PESCE  
13 CHRIS RANDLE  
14 PHILIP RIES  
15 BRIAN ROSEN  
16 JEFFREY D. SAFERSTEIN  
17 JORDAN SAZANT  
18 J. CHRISTOPHER SHORE  
19 MATTHEW W. SILVERMAN  
20 PETER J. SPROFERA  
21 GABE SUTHERLAND  
22 TARA TIANTIAN  
23 LILY YARBOROUGH  
24  
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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Sean  
3 Lane in the United States Bankruptcy Court for the Southern  
4 District of New York, here for some matters on at two  
5 o'clock and I'm going to take the first one, Genesis Global  
6 Holdco LLC. I understand we're here for one uncontested  
7 matter in the light of other things moving today -- from  
8 today's calendar and I also wanted to take the opportunity  
9 to talk about scheduling in October in light of Three Arrows  
10 filing its consolidation motion in light of us already  
11 having a date of October 6th and October 24th. October 6th,  
12 I believe, one of the things included is to talk about Three  
13 Arrows' 2004, and October 24th is one of the things is to  
14 talk about Three Arrows, the status of the claims objection.

15 And so, I put that on the agenda and my apologies,  
16 I probably should have talked about that yesterday, but I --  
17 it escaped my attention. So, let's start by getting  
18 appearances first from Debtors counsel in Genesis.

19 MS. VANLARE: Good afternoon. Your Honor, Jane  
20 VanLare, Cleary Gottlieb Stein and Hamilton on behalf of the  
21 Debtors. I have my colleagues on the line as well, Ms.  
22 Hoori and Sean O'Neal are on.

23 THE COURT: All right. Good to have you all and  
24 on behalf of the Official Committee.

25 MS. PARRA CRISTE: Good afternoon, Your Honor,

1 Amanda Parra Criste of White & Case on behalf of the  
2 Official Committee. I'm joined by my colleague Colin West  
3 today.

4 THE COURT: All right, good afternoon. On behalf  
5 of Three Arrows?

6 MR. GOLDBERG: Good afternoon, Your Honor. Adam  
7 Goldberg of Latham & Watkins on behalf of Three Arrows  
8 Capital. And I can see I'm joined on the line, Your Honor,  
9 by my colleagues, Liza Burton and Rebekah Presley.

10 THE COURT: All right, good afternoon. Any other  
11 parties who are here for Genesis this afternoon?

12 MR. ZIPES: Your Honor, Greg Zipes with the U.S.  
13 Trustee's Office. I don't expect to speak, except maybe at  
14 the end.

15 THE COURT: All right. Good afternoon. Anyone  
16 else?

17 All right, so Ms. VanLare, let me turn it over to  
18 you first to deal with the matters that are on the agenda  
19 and then we can talk about scheduling, but I think today  
20 will be a brief hearing.

21 MS. VANLARE: I think so, too, Your Honor. Your  
22 Honor, I'll pass the virtual podium to my colleague Ms. Kim  
23 to present the motion.

24 THE COURT: All right, happy to hear from Ms. Kim.  
25 Ms. Kim?

1 MS. KIM: Good afternoon, Your Honor. Hoori Kim,  
2 Cleary Gottlieb Steen and Hamilton for the Debtors.

3 I'll be presenting the uncontested motion on the  
4 agenda today, the Debtors' omnibus motion to approve the  
5 rejection of certain executory contracts and related relief.  
6 It's filed at ECF No. 697. In sum, Your Honor, the Debtors  
7 have three requests we are hoping to be granted authority  
8 for in this motion: one, the rejection of certain executory  
9 contracts listed in Exhibit 1 of the proposed order; two,  
10 procedures for the rejection of executory contracts going  
11 forward and the abandonment of related assets; and three,  
12 the procedures for the settlement of de minimis claims  
13 related to the rejection of certain executory contracts.

14 So turning first to the rejection of certain  
15 specified executory contracts in the proposed order, the  
16 Debtors have determined in their business judgment that  
17 these contracts are financially burdensome and no longer  
18 provide benefit. Accordingly, we seek to reject them under  
19 Section 365.

20 The Debtors also seek to -- seek approval of the  
21 rejection procedures. It also occurred to the Debtors that  
22 they may have more executory contracts that they may find  
23 are no longer financially beneficial and may want to reject  
24 them during these Chapter 11 cases. To that end, the  
25 Debtors seek approval of the proposed rejection procedures

1 which among other things provide a 14-day notice period for  
2 parties in interest to object to the proposed rejection, and  
3 after that period passes with no objections, the Debtors  
4 will file a notice of effectiveness under the -- and also  
5 propose procedures for the resolution of objections in case  
6 they are filed.

7 The Debtors also seek approval of procedures  
8 regarding the abandonment and removal of property related to  
9 the rejected contracts. The Debtors request authority to  
10 abandon personal property remaining in a contract  
11 counterparty's possession, subject to a rejected contract,  
12 if the debtors determine in their discretion that the  
13 property is of no value.

14 And the Debtors also proposed procedures to give  
15 an opportunity for any parties to a lease agreement to  
16 remove certain leased property related to a rejected  
17 contract as well before the Debtors determine that they  
18 should abandon the property.

19 Lastly, the Debtors also seek authority to  
20 evaluate and where appropriate settle and pay certain claims  
21 asserted against the Debtors arising from the rejection of  
22 contracts under this motion and in each case, in an amount  
23 no -- not to exceed \$25,000 pursuant to the settlement  
24 procedures without providing notice.

25 This Court should approve the relief requested for

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1 a number of reasons as further described in the motion, Your  
2 Honor. First of all, the rejection of an executory contract  
3 should be approved when the rejection is made in the  
4 exercise of the Debtors' sound business judgment and has  
5 actual benefits to the estate. As discussed, the Debtors  
6 have determined that these contracts, and may determine any  
7 future contracts -- any contracts in the future are no  
8 longer beneficial.

9 The Debtors also submit that rejection of these  
10 contracts retroactive to as of the petition date is also  
11 favored by the balance of equities. The go forward  
12 procedures including for rejection under Section 365, the  
13 abandonment of property under Section 554, and the  
14 settlement of claims under Section 363 as well as Section  
15 9019 of the Federal Rules of Bankruptcy Procedure are also  
16 similarly a sound exercise of the Debtors' business  
17 judgment.

18 It would be expensive and inefficient both for the  
19 Debtors and for this Court to adjudicate and to seek  
20 rejection of contracts on a case-by-case basis and then a  
21 proposed settlement of a related claim each time.  
22 Therefore, the Debtors believe that the Court should grant  
23 the relief requested in the motion. We have consulted --

24 THE COURT: All right --

25 MS. KIM: Thank you, Your Honor.

1 THE COURT: Go ahead, please.

2 MS. KIM: We've consulted about this motion with  
3 the Committee and the proposed or reflects their comments.  
4 We received no formal objections. So, unless you have any  
5 questions, we would ask the Court to grant the order.

6 THE COURT: All right. Thank you very much. Any  
7 party wish to be heard in connection with this motion. All  
8 right, hearing no response, I'm happy to grant the motion.  
9 I just had a quick question about the attached order and  
10 notices, the rejection notice. So, on the -- and my  
11 comments all go to the notion of making sure that anybody  
12 who has a contract rejected gets clear notice that they have  
13 so many days to file a rejection damages claim. And so in  
14 the notice on Page 3 of the notice, the last paragraph, I  
15 think, addresses that.

16 It talks about that pursuant to the terms of the  
17 order for any claim you may assert against the Debtor as a  
18 result of the rejection of any contract, you must submit  
19 proof of claim for damages arising from such rejection on or  
20 before the later of 35 days after the notice -- after the  
21 date of the rejection notice and 30 days after the entry of  
22 the order on the rejection notice. And so is the rejection  
23 notice being discussed there that actual notice?

24 MS. KIM: That is correct, Your Honor, that -- it  
25 is --

1 THE COURT: Okay.

2 MS. KIM: -- the notice of the rejection provided  
3 to the counter party.

4 THE COURT: All right. So I think I might just  
5 tweak it to just say of this rejection notice just so they  
6 understand it's this. There's not some separate rejection  
7 notice that's going to going to happen, but this is the  
8 rejection notice.

9 And then the other -- my other request would be to  
10 put this language in bold and large font and underlined just  
11 because it's the takeaway much as we do with things on  
12 ballots to make sure that people have a notice of that. So  
13 probably from the -- I'll leave it to you as to how you want  
14 to accomplish that, but my guess would be it's probably from  
15 the "you must submit a proof of claim," from that language  
16 right up to the end of it, the end of the -- that sentence  
17 that talks about the 30 days after the entry of an order on  
18 the rejection notice.

19 So, that would be great. And then I guess in  
20 terms of belt and suspenders, I would imagine that any order  
21 on rejection will also have that 30-day language in it, as  
22 well just to be, you know, so that people get more notice  
23 rather than less. But other than that, it all makes perfect  
24 sense to me. It's well explained by you, Ms. Kim, and I'm  
25 happy to grant the requested relief.

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1 MS. KIM: Thank you, Your Honor. We'll make sure  
2 to make those changes.

3 THE COURT: All right. Thank you very much. And  
4 so with that, Ms. VanLare, again, I apologize for not  
5 bringing this up the other day. I'm just trying to sort of  
6 have as efficient a calendar as possible and I know we're  
7 talking about three hours already on the 6th and the 24th  
8 and I think the request to chambers was for dates somewhere  
9 in the middle of the month and I understand Mr. Goldberg  
10 probably just want to be accused of in any way dragging his  
11 feet in terms of getting this motion to consolidate with  
12 various Courts on for hearing at the same time.

13 I'm just trying to keep things together in some  
14 sensible way and since it's -- the motion has filed at this  
15 point, I'm just trying to consolidate a little bit. So --  
16 and obviously the Debtors have other things on the calendar.  
17 So, that's a consideration as well. But I'm happy to hear  
18 anyone who has a suggestion about the best way to proceed in  
19 terms of being efficient.

20 My thought would be to try to avoid having three  
21 hearings in October for this in connection with this matter  
22 since you have the Three Arrows on for three different times  
23 in connection with this case in the month of October, but  
24 I'm open to suggestions either from Mr. Goldberg or from  
25 Debtors. And again, this is not a huge problem but just

1 docket management being what it is, I just wanted to get in  
2 front of it.

3 MS. VANLARE: Your Honor, and our apologies. We  
4 were not aware about the discussion regarding the  
5 scheduling. So, our colleague, Luke Barefoot was not  
6 originally on the -- was not originally planned to join, but  
7 I believe Mr. O'Neal has him on the phone. Unfortunately,  
8 he was having trouble with the link into the hearing, but I  
9 --

10 THE COURT: Yeah, my apologies. For some reason  
11 today, it's one of those days when technology does not want  
12 to cooperate. Lots of people have lots of problems today.  
13 Some people have had problems because the link includes a  
14 period in it which is often overlooked, but I think even for  
15 folks who managed to overcome the period, there have been  
16 other issues, and I appreciate everybody's perseverance. As  
17 I joked at an earlier hearing, the thing that always gets me  
18 is the capital O versus a zero does me in every time. So,  
19 anyway, COVID humor, I guess.

20 MR. O'NEAL: So Your Honor, it's --

21 THE COURT: Go ahead, please.

22 MR. O'NEAL: It's Sean, O'Neal, Cleary Gottlieb.  
23 This is a little unorthodox. I don't know if it's actually  
24 going to work, so I've got Mr. Barefoot on my speaker phone,  
25 but I don't know if it's going to work. So, with my

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1       apologies, we could try it out that way because he has tried  
2       it with a period. He has tried it with an exclamation mark.  
3       He has used every form of punctuation possible and was not  
4       able to get in.

5               THE COURT: All right. My apologies. I  
6       appreciate his perseverance. This is not the way you want  
7       to spend time during your working day.

8               MR. O'NEAL: So with that, Mr. Barefoot, I don't  
9       know if you can hear the hearing, and you can, perhaps you  
10      can -- like we can test out if the judge can hear you.

11              MR. BAREFOOT: Yes, Your Honor. Luke Barefoot  
12      from Cleary Gottlieb for the Debtors. Can you hear me all  
13      right?

14              THE COURT: I can hear you, yes.

15              MR. O'NEAL: Okay. I'm going to take my image off  
16      the screen so as to not confuse people, but you'll be able  
17      to hear Mr. Barefoot.

18              THE COURT: All right. All right, Mr. Barefoot.  
19      What thoughts do you have, and then I'll hear from Mr.  
20      Goldberg.

21              MR. BAREFOOT: In terms of scheduling on Three  
22      Arrows related matters, we do have the Rule 2004 motion that  
23      was filed by Three Arrows meeting on October the 6th and  
24      then, as Your Honor mentioned, we -- in the schedule we had  
25      set October 24th down as the date for the next status

1 conference where we will be setting the schedule for expert  
2 discovery, pretrial briefing, and the evidentiary hearing on  
3 our claims objections.

4 Your Honor, I think it, it's a little difficult to  
5 (indiscernible) any further schedule with respect to this  
6 forthcoming consolidated motion Court-to-Court protocol that  
7 the liquidators (indiscernible) very recently that they  
8 planned to file because it (indiscernible) yet been filed  
9 and nor have lift stay motions been filed in several of the  
10 (indiscernible) Debtor matters, including (indiscernible)  
11 that motion plans to address, so subject to Your Honor  
12 (indiscernible) --

13 THE COURT: Well, let me ask you this question,  
14 Mr. Barefoot. Do you have any -- I don't -- you all have a  
15 better sense of what's on or what's intended to be on for  
16 the omnibus on the 24th.

17 Do you have any objection to using that date for  
18 this motion as well, I -- because there's a point where you  
19 reach the point of no return in terms of loading things on a  
20 calendar, but it would seem to make sense since we're  
21 talking about Three Arrows and substantive issues that date  
22 and I don't think anybody will hold it against Three Arrows,  
23 the period of time from, say, you know, the ides of October  
24 to October 24th in terms of, you know, thinking about their  
25 speed at which they're moving.

1                   So, that would be my suggestion, assuming that  
2                   doesn't overload the calendar on the 24th in some way that's  
3                   problematic.

4                   MR. BAREFOOT: Your Honor, I think that's fine, so  
5                   long as we keep in mind Your Honor's comments at yesterday's  
6                   status conference that, you know, points of delay can't be  
7                   used as a weapon and that that can't be a reason why we  
8                   can't go forward on the 24th with setting the further  
9                   discovery and brief (indiscernible).

10                  THE COURT: All right. Yeah, although I promise  
11                  not to -- I promise to treat Mr. Goldberg's motion as if it  
12                  was on for a hearing on October 15th, if we put it on for  
13                  the 24th. I don't think that -- I don't think that's a  
14                  significant period of time. But again, I know people get  
15                  nervous about these things. I can understand that.

16                  So Mr. Goldberg, would the 24th work for you?

17                  MR. GOLDBERG: Thank you, Your Honor. I  
18                  appreciate the opportunity to be heard. My -- for the  
19                  record, Adam Goldberg of Latham & Watkins on behalf of Three  
20                  Arrows Capital. The 24th works for us based on Your Honor's  
21                  remarks regarding the overall timing. You know, we did  
22                  reach out to chambers in an effort to identify available  
23                  dates before conferring with opposing counsel to define  
24                  those dates. We do anticipate filing our consolidation  
25                  motion.

1                   We've started to call it the coordination motion.  
2                   Folks can call it whatever they wish when they see it.  We  
3                   plan to give everyone the opportunity to see it today.  And  
4                   so, you know, we would view that as a motion that could be  
5                   heard within 14 days and so, you know, we -- if Your Honor  
6                   is not going to hold that time gap against us to the 24th,  
7                   we --

8                   THE COURT:  No, no, I figure it's also more  
9                   efficient for your estate as well to come in for two  
10                   hearings rather than three hearings in the month of October.  
11                   And I don't think that that difference between adding a  
12                   third date in the middle of the month and doing it on the  
13                   24th is of significance in and of itself.

14                   MR. GOLDBERG:  Thank you, Your Honor, and I  
15                   appreciate that and appreciate the opportunity to be heard  
16                   then as well as today.  You know, I think that will tee up  
17                   the October 24th hearing as kind of a holistic evaluation of  
18                   where we stand and how we should go forward.

19                   THE COURT:  All right.  And that was the -- I  
20                   think you read my mind, is it does make some sense to have  
21                   those together in the sense of we are sort of thinking about  
22                   those issues, big picture, and so there's a certain synergy,  
23                   I think, between the topics on for the 24th and those on in  
24                   connection with your motion as you've described it, so.

25                   MR. GOLDBERG:  And if I may make one other note,

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1 Your Honor, is that given the relief that we're seeking  
2 where we're going to try and coordinate a number of active  
3 proceedings, we also anticipate filing companion motions in  
4 the other relevant cases today and -- or otherwise as soon  
5 as possible with the first priority being this case. And so  
6 we're also working to scheduling hearings in those other  
7 cases as they become available. I can't say for certain now  
8 when those hearings might be before or after the October  
9 24th date.

10 THE COURT: That's fair enough. I think we all  
11 have plenty to do in this case and so we'll let other judges  
12 who are presiding with those other cases, address them as  
13 they see fit after consultation with all the parties in  
14 those cases. So, fair enough. And so, thank you, Mr.  
15 Goldberg for your comments. And Mr. West, I didn't want to  
16 exclude you if there's anything that you wanted to say on  
17 behalf of the Committee.

18 MR. WEST: Your Honor, yeah, we think that it does  
19 make sense for efficiency and convenience purposes to hold a  
20 hearing on the 24th on both matters and we understand the  
21 Court's comments that the nine-day period or whatever the  
22 period is between the date that it -- that the liquidators  
23 would like to schedule it for and the 24th will not be held  
24 against them.

25 But I don't want there to be any surprise, Your

1 Honor, that we do intend, quite candidly, to hold the rest  
2 of the period --

3 THE COURT: Yeah, I -- no, I think that's pretty  
4 clear that the timing in general, putting aside those nine  
5 days, will be the subject of conversation and debate. I  
6 think everybody recognizes that.

7 MR. O'NEAL: Your Honor --

8 MR. WEST: Thank you, Your Honor. Thank you.

9 MR. O'NEAL: -- O'Neal again, if I may be heard.

10 THE COURT: Sure.

11 MR. O'NEAL: Sean O'Neal, Cleary Gottlieb, on  
12 behalf of the Debtors. We may have additional items on the  
13 agenda for the 24th. We'll come back to Your Honor on that  
14 particular point. I do believe that Mr. Barefoot -- and  
15 apologies for the strangeness of this request -- but I think  
16 Mr. Barefoot had some additional comment or clarification  
17 that he would like to make, if I could --

18 THE COURT: Sure. That's fine. Always happy to  
19 hear that. Mr. Barefoot?

20 MR. BAREFOOT: Thank you, Your Honor. Luke  
21 Barefoot from Cleary Gottlieb for the Debtor. Just one  
22 point of clarification. It sounds like we're all aligned on  
23 having the consolidation or (indiscernible) protocol motion  
24 as well as the scheduling hearing that's contemplated by  
25 Your Honor's scheduling order heard on the 24th. I just

1 wanted to clarify that that would then also be the hearing  
2 date on Three Arrows' lift stay motion, given that that's  
3 kind of part and parcel of -- and I think would really have  
4 to be considered jointly with the shortcoming consolidation  
5 motion.

6 THE COURT: Yeah, I think that's how I interpreted  
7 that the stay motion was being adjourned to the date for the  
8 for the consolidation or coordination motion, as Mr.  
9 Goldberg sees fit to title it later today. Is that right,  
10 Mr. Goldberg?

11 MR. GOLDBERG: Thank you, Your Honor. Yes, Adam  
12 Goldberg of Latham & Watkins for the record. Yes, the stay  
13 motion totally makes sense to be heard on October 24th  
14 together with the related motion to seal and appreciate Mr.  
15 Barefoot raising that for the purposes of clarity for  
16 everyone.

17 THE COURT: All right. Thank you. Mr. Barefoot,  
18 anything else from you?

19 MR. BAREFOOT: No, Your Honor. That's all very  
20 clear. Thank you for hearing us on that.

21 THE COURT: All right and thank you for your  
22 perseverance. And sometimes I'm tempted to have a little  
23 can and some string available just because I know it can be  
24 maddening and time consuming, to overcome the obstacles that  
25 technology throws at us, but you have done so, so thank you

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1 for that, with Mr. O'Neal's assistance and, let me thank the  
2 parties also. I'd rather be a bit of overkill on things  
3 like this and talk to parties rather than leave parties  
4 guessing and leave things up in the air.

5 We all want to focus on the substance of the  
6 various requests rather than get bogged down on surprises at  
7 hearings. Nobody likes surprises. They're efficient.  
8 They're -- and sort of antithetical to due process. So I  
9 appreciate your indulgence and your working with me on that  
10 just to make sure. Again, I'd rather be safe than sorry on  
11 that just so that everybody's -- feels like they're on the  
12 same page and we can just get to the merits when it's time.

13 So thank you all for taking time to talk about it  
14 today. And with that --

15 MR. ZIPES: Your --

16 THE COURT: Mr. Zipes, go ahead.

17 MR. ZIPES: Your Honor, Greg Zipes with the U.S.  
18 Trustee's Office. I was just going to ask the parties to  
19 work with my office and get documents relating to any  
20 sealing motions to my office to review. I'm sure that will  
21 be accomplished, but I just want to state that, Your Honor.

22 THE COURT: All right. No, fair point. Good time  
23 to bring up and happy to have that thrown into the mix.

24 MR. ZIPES: And --

25 THE COURT: All right -- go ahead.

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1                   MR. ZIPES: Your Honor, I was just going to raise  
2 one other issue just on general timing, and that is the  
3 disclosure statement currently is on for October 6th and I  
4 don't know if the parties were going to get to this or not,  
5 but is that schedule affected by what's happening right now?

6                   THE COURT: Well, Ms. VanLare, I'll turn that over  
7 to you, I assume, or Mr. O'Neal, whoever wants to take that  
8 one.

9                   MS. VANLARE: Yes, Your Honor, and Mr. Zipes. I  
10 think we may be further pushing that date, but we will be in  
11 touch with Your Honor's chambers about that and about any  
12 new dates.

13                  THE COURT: All right. Great. Thank you very  
14 much. Anything else from any party of Genesis? All right.  
15 Thank you again for your assistance this afternoon and I  
16 will see you all soon.

17                  MR. GOLDBERG: Thank you, Your Honor.

18                  THE COURT: Thank you.

19                  (Whereupon these proceedings were concluded at  
20 2:33 PM)

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1 I N D E X

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3 RULINGS

4 Page Line

5 Omnibus motion to approve the rejection  
6 of certain executory contracts and  
7 related relief

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing  
4 transcript is a true and accurate record of the proceedings.

5

6 *Sonya M. Ledanski Hyde*

7 Sonya Ledanski Hyde

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20 Veritext Legal Solutions

21 330 Old Country Road

22 Suite 300

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24

25 Date: September 28, 2023

[&amp; - arising]

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**[arrows - connection]**

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